



8011-01p

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82623; File No. SR-IEX-2018-01]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Default Handling of Market Orders Entered with a Time-in-Force of DAY

February 2, 2018

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 22, 2018, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),⁴ and Rule 19b-4 thereunder,⁵ Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

modify the default handling of market orders⁶ entered with a time-in-force of DAY.⁷ The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁸ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁹ The text of the proposed rule change is available at the Exchange’s website at www.iextrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to modify the default handling of market orders entered with a time-in-force of DAY (hereinafter referred to as “market DAY orders”).

Pursuant to Rule 11.190(a)(2), the Exchange offers Users a market order, which is an order type that allows Users to buy or sell a stated amount of a security that is to be executed at

⁶ See Rule 11.190(a)(2).

⁷ See Rule 11.190(c)(3).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4.

or better than the NBBO at the time the order reaches the Exchange.¹⁰ Specifically, pursuant to Rule 11.190(a)(2), market orders do not trade through Protected Quotations,¹¹ consistent with Rule 611(a)(1) of Regulation NMS.¹² Moreover, any portion of a market order that is designated as an IEX Only order¹³ will be canceled if, upon receipt by the System,¹⁴ it cannot be executed by the Exchange in accordance with the Exchange's order execution rules.¹⁵ Any portion of a market order that is not designated as an IEX Only order (i.e., routable orders as described in IEX Rule 11.230(b)) that cannot be executed in full in accordance with the Exchange's order execution rules when reaching the Exchange will be eligible for routing away pursuant to IEX Rule 11.230(a)(2). A routable market order will trade at increasingly aggressive prices, fully satisfying all Protected Quotations, until the order is fully filled, reaches the LULD Price Band,¹⁶ or reaches the Router Constraint.¹⁷

Pursuant to Rule 11.190(a)(2)(A), market orders must have a time-in-force of IOC, FOK, or, DAY, depending on the User election.¹⁸ Pursuant to Rule 11.190(a)(2)(E)(iii), market DAY orders, by default, are rejected, unless the User specifically elects to configure one or more of its

¹⁰ A market order is always non displayed, may be a MQTY (as defined in Rule 11.190(b)(11)), may be routable or IEX Only, may not be designated as an ISO (as defined in Rule 11.190(b)(12)), and may not be submitted with a limit price. See Rules 11.190(a)(2)(B)-(D), and (F)-(G).

¹¹ See Rule 1.160(bb)

¹² See 17 CFR 242.611(a)(1).

¹³ See Rule 11.190(b)(6).

¹⁴ See Rule 1.160(mn).

¹⁵ See Rules 11.230 and 11.230(a).

¹⁶ See Rule 11.280(e)(5)(A).

¹⁷ See Rule 11.190(f)(2).

¹⁸ Market orders with a time-in-force of GTT, GTX, and SYS, are rejected. See Rules 11.190(a)(2)(E)(iv)-(vi).

connectivity ports to accept market DAY orders.¹⁹ Market orders with a time-in-force of IOC and FOK are accepted and eligible to trade during the Regular Market Session only.²⁰ Market DAY orders are eligible to trade or route during the Regular Market Session and treated by the System as having a time-in-force of IOC. Furthermore, market DAY orders submitted before the open of the Regular Market Session are queued by the System until the Opening Auction (or Halt Auction, as applicable)²¹ for IEX-listed securities, or until the Opening Process for non-IEX listed securities pursuant to IEX Rule 11.231, except market DAY orders that are designated to route pursuant to Rule 11.230(c).

Furthermore, pursuant to Rule 11.190(f)(1), market orders, including market DAY orders entered during continuous trading are subject to the IEX Order Collar, which prevents any incoming order or order resting on the Order Book, including those marked ISO, from executing at a price outside the Order Collar price range (i.e. prevents buy orders from trading at prices above the collar and prevents sell orders from trading at prices below the collar). The order collar price range is calculated using the numerical guidelines for clearly erroneous executions.

The default treatment for market DAY orders was implemented based on informal discussions with various market participants who indicated that such orders are not typically utilized by market participants during continuous trading because of their aggressive trading characteristics. As a result, the Exchange determined that the default treatment for market DAY orders was appropriate.

¹⁹ A User can elect for the Exchange to accept market orders with a time-in-force of DAY on the Equities Port Request Form on pages 8-9 of its initial IEX Connectivity Agreement and Forms. A User may also change an existing connectivity port to accept market orders with a time-in-force of DAY by submitting an updated Equities Port Request Form to marketops@iextrading.com.

²⁰ See Rule 1.160(gg).

²¹ See Rule 11.350(c).

On August 4, 2017, the Commission approved a proposed rule change filed by the Exchange to adopt rules governing auctions for IEX-listed securities, including Opening and Closing Auction processes that establish IEX Official Opening and Closing Prices for each trading day, as well as IPO, Halt, and Volatility Auction processes utilized to conduct initial public offerings, and resume trading after a regulatory trading halt or pause in an IEX-listed security (collectively, “IEX Auctions”).²²

During the iterative process of designing IEX Auctions, informal discussions with various market participants indicated that notwithstanding the atypical use-case for the entry of market DAY orders during continuous trading, such orders are in fact ordinarily utilized by investors to interact with the auction processes of certain primary listing markets, because market DAY orders retain their aggressive pricing characteristics, which increases the likelihood of execution and adds depth of liquidity in the auction, while remaining constrained to the auction match price, therefore passively benefiting from the price discovery process.²³ Accordingly, as proposed, the Exchange will instead allow all connectivity port sessions across all Members to accept market DAY orders by default.

Accordingly, the Exchange designed the IEX Auction processes to account for market DAY orders by queueing such orders on the Auction Book²⁴ for participation in an upcoming auction when the order type is not eligible for trading in the current market session (i.e., during the Pre-Market Session for the Opening Auction), or when there is no active continuous trading

²² See Securities Exchange Act Release No. 81316 (August 4, 2017), 82 FR 37474 (August 10, 2017)(SR-IEX-2017-10). See also Rules 11.350(a)(12) and (10), respectively.

²³ See e.g., Cboe BZX Exchange, Inc. (“Bats”) Rules 11.9(a)(2) and 11.23(a)(8).

²⁴ See Rule 11.350(a)(1).

(i.e., during the Order Acceptance Period²⁵ before an IPO, Halt, or Volatility Auction), and then immediately canceling any unfilled portion immediately after the auction. This design allows Users to leverage the benefits of interacting with the IEX Auction processes using market DAY orders while mitigating the potentially harmful impact of such orders that could manifest during continuous trading. Specifically, pursuant to Rule 11.350(a)(1):

- The Opening and IPO Auction Books include market orders with a time-in-force of DAY entered during the Order Acceptance Period, and in the case of the Opening Auction, before the Opening Auction Lock-In Time;²⁶
- The Halt Auction Book includes market orders with a time-in-force of DAY received during the Order Acceptance Period within the Regular Market Session, or queued prior to the Regular Market Session for securities that have not traded during the Regular Market Session on that trading day (i.e., market orders with a time-in-force of DAY entered during the Pre-Market Session for the Opening Auction that are participating in a Halt Auction pursuant to Rule 11.350(c)(2)(D) or (E)(ii)); and
- The Volatility Auction Book includes market orders with a time-in-force of DAY received during the Order Acceptance Period within the Regular Market Session.

However, if a User does not have their connectivity ports properly configured to allow market DAY orders, such auction interest would be rejected by default. While, as noted above, a User can elect for the Exchange to accept market DAY orders by submitting an Equities Port Request Form, the process of making system changes to modify, test, and deploy the configuration adds additional complexity for Members and the Exchange. Therefore, to simplify User interaction with the System and allow Users to efficiently leverage the benefits of interacting with the IEX Auction processes using market DAY orders, the Exchange is proposing to eliminate the default rejection of market DAY orders and the corresponding User elected connectivity port settings for the acceptance of market DAY orders. As proposed, the Exchange

²⁵ See Rules 11.1350(a)(29)(A)-(C).

²⁶ See Rule 11.350(a)(22).

will instead allow all connectivity port sessions across all Members to accept market DAY orders by default.

The proposed changes do not amend the behavior of market DAY orders, as described above. Moreover, notwithstanding the potentially aggressive trading characteristics of market orders generally, the Exchange believes that there are sufficient limitations on execution of market orders, as described above, to mitigate against such concerns.

As announced in IEX Trading Alerts #2017-015 and #2017-046, the Exchange intends to become a primary listing exchange and support its first IEX-listed security in 2018.²⁷ In addition, as part of the listings initiative, the Exchange is providing a series of industry wide weekend tests for the Exchange and its Members to exercise the various technology changes required to support IEX Auctions and listings functionality.²⁸ Accordingly, the Exchange is proposing to amend the default acceptance of market DAY orders in advance of the industry wide testing period in order to allow Members and other market participants time to develop, test, and deploy any necessary changes to support the handling of market DAY orders for participation in IEX Auctions.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section

²⁷ See IEX Trading Alert #2017-015 (Listings Specifications, Testing Opportunities, and Timelines), May 31, 2017. See also IEX Trading Alert #2017-046 (IEX Listings Timeline Update), originally published on Monday, October 30, 2017, and re-published on Tuesday, October 31, 2017.

²⁸ See, e.g., IEX Trading Alert #2017-028 (First Listings Functionality Industry Test on Saturday, August 26), August 17, 2017; IEX Trading Alert #2017-037 (Second Listings Functionality Industry Test on Saturday, September 9), September 7, 2017; IEX Trading Alert #2017-039 (Third Listings Functionality Industry Test on Saturday, September 23), September 18, 2017; IEX Trading Alert #2017-040 (Rescheduled 4th Listing Functionality Industry Test), September 29, 2017; IEX Trading Alert #2017-046 (IEX Listings Timeline Update), originally published on Monday, October 30, 2017, and re-published on Tuesday, October 31, 2017; and IEX Trading Alert #2017-047 (Fourth Listings Functionality Industry Test on Saturday, November 4), October 31, 2017.

6(b)²⁹ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act³⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change is consistent with the protection of investors and the public interest, because it does not alter the substantive behavior of market DAY orders, but instead simplifies the process of entering market DAY orders for all Members. Specifically, the proposed changes are designed to simplify User interaction with the System and allow Users to efficiently leverage the benefits of interacting with the IEX Auction processes by eliminating the default rejection of market DAY orders and the corresponding User elected connectivity port settings for the acceptance of market DAY orders. The Exchange further believes that since the proposed changes do not amend the behavior of market DAY orders, the proposed rule changes are consistent with the protection of investors and the public interest because the limitations on execution of market orders, as discussed in the purpose section, would continue to mitigate against potential adverse market impact from such orders during continuous trading.

Additionally, IEX notes that no other exchange utilizes default rejection of orders comparable to market DAY order types.³¹

Moreover, the Exchange believes that the proposed rule changes are consistent with the protection of investors and the public interest because the Exchange is proposing to amend the default behavior of market DAY orders during the industry wide testing period for Members and

²⁹ 15 U.S.C. 78f.

³⁰ 15 U.S.C. 78f(b)(5).

³¹ See, e.g., Bats Rule 11.9(a)(2).

other market participants to test with IEX as a primary listing exchange, and in advance of the first listing transferring to IEX, which will allow Members and other market participants time to develop, test, and deploy any necessary changes to support the handling of market DAY orders for participation in IEX Auctions.³²

Furthermore, as discussed in the purpose section, the process of making system changes to modify, test, and deploy the port setting configurations on a Member-by-Member basis adds additional technical complexities for Members and the Exchange. Thus, the Exchange believes the proposed rule changes are consistent with the protection of investors and the public interest in that the Exchange is proposing to simplify the process of entering market DAY orders, thereby reducing overall technical complexities within the System that raise risks to Exchange operations, Members, and their investor clients.

Lastly, the Exchange believes that the proposed rule change would not result in unfair discrimination, since the proposed changes amend the default behavior of market DAY orders across all connectivity ports. Thus, all Members will be eligible to enter market DAY orders on a fair and equal basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes do not impact inter-market competition since it is merely designed to simplify the entry of market DAY orders for all Members, without substantively changing the approved rules governing the behavior of such orders. Moreover, as noted above, no competing exchanges impose a similar requirement.

³² See supra note 28.

In addition, the Exchange does not believe that the proposed changes will have any impact on intra-market competition, because as discussed in purpose section, the proposed changes amend the default behavior of market DAY orders across all connectivity ports. Thus, all Members will be eligible to enter market DAY orders on a fair and equal basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)³³ of the Act and Rule 19b-4(f)(6)³⁴ thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)³⁵ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

³³ 15 U.S.C. 78s(b)(3)(A).

³⁴ 17 CFR 240.19b-4(f)(6).

³⁵ 15 U.S.C. 78s(b)(2)(B).

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2018-01 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-IEX-2018-01. This file number should be included in the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet website at www.iextrading.com. All

comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2018-01 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Eduardo A. Aleman,
Assistant Secretary.

³⁶ 17 CFR 200.30-3(a)(12).

